Dear ABA:

I join in the Joint Comment Regarding Proposed Changes to ABA Model rule of Professional Conduct 8.4 filed by “52 ABA members from 22 States.” As I am licensed to practice in Washington State, so now, at least 23 states are represented.

To that comment I would simply add, that first and foremost the RPC should protect and promote the Constitution of the United States of America. RPC which broadly prohibit constitutionally protected speech and conduct, but for itemized exceptions, are written inside out, thus mocking the Constitution. The conduct of an attorney who engages in traditional, if not politically favored, speech and conduct should not trigger a violation of the PRC, but for an exception to the rule, that is, the Constitution. Such rules serve to impermissibly chill the exercise of First Amendment rights. RPC which prohibit and sanction Constitutionally protected rights, must be (1) narrowly drawn to protect (2) a compelling state interest, that is, a critical aspect of the administration of justice, and (3) only where a less burdensome rule will not achieve such indispensable goal.

Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," Kramer v. Union Free School District, 395 U.S. 621, 627 (1969); Shapiro v. Thompson, 394 U.S. 618, 634 (1969), Sherbert v. Verner, 374 U.S. 398, 406 (1963), and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. Griswold v. Connecticut, 381 U.S. at 485; Aptheker v. Secretary of State, 378 U.S. 500, 508 (1964); Cantwell v. Connecticut, 310 U.S. 296, 307-308 (1940); see [p156] Eisenstadt v. Baird, 405 U.S. at 460, 463-464 (WHITE, J., concurring in result).

Roe v. Wade.

Moreover, Courts adopt RPC based upon their inherent power to regulate the proceedings before them, such courts do not have the general legislative power to regulate the conduct of attorneys unrelated to their involvement with the administration of justice.

The present rule does not unduly restrict an attorney from exercising his Constitutional rights and achieves the indispensable goal of preserving the administration of justice. If it is not broken, therefore, desist from trying to improve it, parenthetically, for reasons unrelated to the administration of justice.

Respectfully submitted,

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